

REMARKS

Pursuant to the requirement for restriction, Applicant provisionally elects the invention classified in Group I to which claims 1 - 6 are directed.

The requirement for restriction is respectfully traversed.

The Examiner has asserted that the apparatus of Group II as claimed (emphasis supplied) can be used to practice a materially different process such as the heating of nuts or even nonfood materials. That is not so. The apparatus as claimed is an apparatus for the treatment of meat as the preamble states and comprises a first vessel for agitating bodies of meat which includes means for maintaining the treatment temperature substantially constant while meat is agitated for a period of time sufficient to distribute the treating solution in the meat. Nothing is said there about nuts or nonfood materials or even other food materials. The second vessel is a vessel for receiving bodies of meat from the first vessel for cooling said bodies of meat to a particular temperature. Thus as claimed, the apparatus can be used to practice only one process and that is the process of claim 1.

Lest the reference to the treatment of meat be thought to be only a statement of intended use, attention is directed to In re Szajna & Lump, 164 USPQ 632 and the line of cases which make clear that even limitations in the preamble can give weight and meaning to claim structure so that deviation as to intended use will not

apply to the same structure. That is certainly the case with the apparatus claims here.

Accordingly, the apparatus of Group II as claimed cannot be used to practice any different process, let alone a materially different process and thus there is no basis for restriction.

An action on the merits of all of the claims is awaited.

Respectfully submitted,
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